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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,985	11/14/2003	James E. Drake SR.	BLT1841	1527

30245 7590 03/24/2005  
ANTHONY EDW. J CAMPBELL  
PO BOX 160370  
AUSTIN, TX 78716

EXAMINER
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BRITTAIN, JAMES R

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/713,985

Applicant(s)

DRAKE, JAMES E.

Examiner

James R. Brittain

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11142003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION*****Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the telescoping rod-like member (claim 19) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it

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pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 18 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. the rod-like member configured to be telescoping is not enabled so as to permit one of ordinary skill in the art to determine how the telescoping takes place.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-10, 13, 14, 16, 18 and 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Clarke (US 123380).

Clarke (figures 1, 2) teaches a support inherently usable as an apparatus which prevents a closed umbrella from opening comprising: a ring defining an opening, E, wherein the ring comprises a continuous circle and a handle A, M, N, wherein the handle comprises a proximal end and a distal end, wherein the proximal end is substantially perpendicular to the distal end, wherein the distal end is fixably coupled to the ring, and wherein the proximal end is adapted to be held in a user's hand. While the device is not used to prevent a closed umbrella from opening, these claims are constructed to be drawn to the apparatus alone and not the apparatus and umbrella in combination. The apparatus of Clarke is inherently capable of keeping an

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appropriately sized umbrella from opening. The base, M, is inherently capable of being manipulated as a handle. The various functional statements of claims 2-4, 6-10 and 18 have been considered, but do not claim the umbrella in combination and the device of Clarke can perform such functions for an appropriately sized umbrella and it is well established that umbrellas come in many sizes.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke (US 123380).

Clarke (figures 1, 2) teaches a support inherently usable as an apparatus which prevents a closed umbrella from opening comprising: a ring defining an opening, E, wherein the ring comprises a continuous circle and a handle A, M, N, wherein the handle comprises a proximal end and a distal end, wherein the proximal end is substantially perpendicular to the distal end, wherein the distal end is fixably coupled to the ring, and wherein the proximal end is adapted to be held in a user's hand. While the device is not used to prevent a closed umbrella from opening, these claims are constructed to be drawn to the apparatus alone and not the apparatus and umbrella in combination. The apparatus of Clarke is inherently capable of keeping an appropriately sized umbrella from opening. The base, M, is inherently capable of being manipulated as a handle. The difference is that the ring is not decorated by having ornaments

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fitted into cut-out areas. However, decoration for aesthetic appearance is a common improvement and applicant is given Official Notice that the use of trim within openings of a ring for decorative purposes is well known in the art as a matter of improved aesthetic appearance.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke (US 123380) in view of JP 2003-79417.

Clarke (figures 1, 2) teaches a support inherently usable as an apparatus which prevents a closed umbrella from opening comprising: a ring defining an opening, E, wherein the ring comprises a continuous circle and a handle A, M, N, wherein the handle comprises a proximal end and a distal end, wherein the proximal end is substantially perpendicular to the distal end, wherein the distal end is fixably coupled to the ring, and wherein the proximal end is adapted to be held in a user's hand. While the device is not used to prevent a closed umbrella from opening, these claims are constructed to be drawn to the apparatus alone and not the apparatus and umbrella in combination. The apparatus of Clarke is inherently capable of keeping an appropriately sized umbrella from opening. The base, M, is inherently capable of being manipulated as a handle. The difference is that the base, M, lacks an aperture to allow it to be more easily manipulated by hand. It would have been obvious to modify the device of Clarke so that the base, M, has an aperture to permit it to be manipulated by hand in view of JP2003-79417 (figures 3, 5) in which a holder for an umbrella has a handle with an aperture therein to permit easier manipulation by hand.

***Allowable Subject Matter***

Claim 20 is allowed.

***Conclusion***

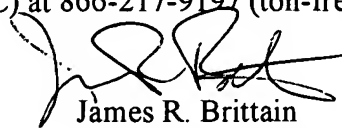
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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent of Castle (US 4321003, figure 1) teaches tool structure with a ring at one end and an apertured handle at the other.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (703) 308-2222. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (703) 306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James R. Brittain  
Primary Examiner  
Art Unit 3677

JRB